

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

CHRISTIAN ALBERTO SANTOS GARCIA,
et al.,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, *et al.*,

Defendants.

Case No. 1:20-cv-00821 (LMB/JFA)

JOINT STATUS UPDATE

The parties, by counsel, hereby provide the Court with a Joint Status Update, in response to the Court's Order of October 4, 2021 [Dkt. No. 196]. The parties respectfully represent as follows:

1. On September 9, 2021, Plaintiffs filed two Notices of Voluntary Dismissal [Dkt. Nos. 192 and 193], dismissing Defendants Immigration Centers of America – Farmville, LLC, Jeffrey Crawford, and Armor Correctional Health Services, Inc. (the “Farmville Defendants”) from this case. Defendants Alejandro Mayorkas, Tae Johnson, Shawn Byers, and U.S. Immigration and Customs Enforcement (the “Federal Defendants”) remain as defendants in this case, and the remaining causes of action as pled in the First Amended Complaint [Dkt. No. 123] are the First Cause of Action, Violation of the Right to Substantive Due Process Under the Fifth Amendment; and the Fifth Cause of Action, Violation of the Administrative Procedure Act. *See* Am. Compl., Dkt. No. 123 at ¶¶ 398-412; 465-476.

2. Resolution of Federal Defendants' Motion to Dismiss, In Part, for Lack of Jurisdiction or Failure to State a Claim [Dkt. No. 130] has been stayed since the Court's December 18, 2020 Order [Dkt. No. 153]. That Motion remains pending since Federal Defendants' dismissal of their interlocutory appeal.

3. In that same December 18, 2020 Order, the Court ordered that the claims of plaintiffs Jose Linares Hernandez, Vano Bazerashvili, and Jorge Alexander Rivera Rodriguez against Federal Defendants be dismissed as moot after those individuals were released from Farmville Detention Center ("FDC") or were otherwise removed from the United States of America and thus also no longer in FDC [Dkt. Nos. 130, 149, 153]. Since that time, the following plaintiffs asserting claims against Federal Defendants have also been released from FDC or were otherwise removed: Santos Salvador Bolanos Hernandez; Melvin Velasquez Orellana; Olaitan Michael Olaniyi; and Jerbin Ivan Garcia Garcia.

4. Currently, there are three named plaintiffs still in FDC, namely: Christian Alberto Santos Garcia; Marco Antonio Miranda Sanchez; and Shawn Houslin. All three individuals have received two doses of the COVID-19 vaccine.

5. Currently, there are 13 detainees total at FDC, with 11 detainees having received their COVID-19 vaccines and the other two having declined to receive doses of COVID-19 vaccines.

6. On September 1, 2021, at the invitation of counsel for the Federal Defendants, counsel for Plaintiffs sent a settlement demand regarding the pending claims for injunctive relief in this action. Federal Defendants are considering this settlement demand but have yet to respond.

7. Plaintiffs contend that their claims for injunctive relief are not mooted by the injunction in *Fraihat v. U.S. Immigration and Customs Enforcement*, 445 F. Supp. 3d 709 (C.D. Cal. 2020). In *Fraihat*, the court ordered that high-risk, medically vulnerable detainees be evaluated for release; Federal Defendants have evaluated Plaintiffs Christian Alberto Santos Garcia, Marco Antonio Miranda Sanchez, and Shawn Houslin for release under *Fraihat* and have declined to release them, and all three remain detained at Farmville. Furthermore, Plaintiffs are pressing a number of facility-specific conditions issues, especially regarding medical care, that are not specifically contemplated in *Fraihat*. Finally, the *Fraihat* injunction has not barred ICE from transferring detainees between detention centers or bringing new detainees into any particular detention center, as this Court has done.

8. In addition to the pending claims for injunctive relief, on March 2, 2021, each of the fourteen Plaintiffs in this action also filed an administrative claim Form 95, alleging injuries arising from the same acts and omissions set forth in the First Amended Complaint in this action, and seeking recovery of damages pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* Those claims became ripe for litigation in this Court six months thereafter, on September 4, 2021, *see* 28 U.S.C. § 2675.

9. On May 12, 2021, a fifteenth former Farmville detainee, Carlos Lopez Rivas, also represented by the Legal Aid Justice Center, filed an administrative claim Form 95, also alleging injuries arising from the same acts and omissions set forth in the First Amended Complaint in this action, and seeking recovery of damages pursuant to the Federal Tort Claims Act. If DHS fails to make a final determination within six months of this filing, his claims will become ripe for litigation in this Court on November 12, 2021.

10. On September 7, 2021, at the invitation of counsel for the Federal Defendants, counsel for Plaintiffs sent a settlement demand regarding the pending FTCA claims of the fourteen Plaintiffs in this action and Carlos Lopez Rivas. Federal Defendants are considering this settlement demand but have yet to respond.

11. Plaintiffs will seek leave of court to file a Second Amended Complaint on November 15, 2021 (the first business day after Carlos Lopez Rivas's FTCA claims become ripe to litigate before this Court). Aside from updating the facts and removing the Farmville Defendants and claims against the Farmville Defendants, this forthcoming Second Amended Complaint would add Carlos Lopez Rivas as a Plaintiff; plead a cause of action under the FTCA; and add the United States of America as a defendant for the FTCA claim.

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Dated: 10/12/2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Dated: 10/12/2021

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